

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA**

**PNEUMO ABEX LLC'S ANSWER TO
PLAINTIFFS' COMPLAINT**

COMES NOW, Defendant Pneumo Abex LLC (“Abex”), and in answer to Plaintiffs’ complaint states as follows:

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

As answer to each and every numbered paragraph of Plaintiffs' complaint, Abex states as follows:

“JURISDICTION”

This paragraph of the complaint states a legal conclusion to which no response is required. To the extent a response is required, it is denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

“STATUTE OF LIMITATIONS”

This paragraph of the complaint states a legal conclusion to which no response is required. To the extent a response is required, it is denied.

“BACKGROUND FACTS – THE PLAINTIFFS”

1. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

2. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against

Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

3. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

4. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

5. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or

deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

6. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

7. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

8. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

9. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

10. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

11. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied. Abex is without sufficient knowledge to admit or deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

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deny the remaining allegations contained in this paragraph of the complaint, and accordingly they are denied.

“BACKGROUND FACTS – THE DEFENDANTS”

16. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

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67. Abex admits that it is a Delaware limited liability company. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. Abex denies any liability to Plaintiff individually or vicariously based on the actions or omissions of any other entities, including any named defendants. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

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**“DEFENDANTS’ CONDUCT AND
PLAINTIFFS AND/OR PLAINTIFFS’ DECEDENTS INJURY”**

87. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a

response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

88. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

89. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

90. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

91. A. – R. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint and its subparagraphs therein. To the extent the remainder of this paragraph of the complaint and its subparagraphs therein contain any material allegations against Abex, they are denied.

92. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

“COUNT ONE”

93. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

94. Abex is without sufficient knowledge to admit or deny the allegations contained in this paragraph of the complaint, and accordingly they are denied.

95. A – B. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint and its subparagraphs therein. To the extent the remainder of this paragraph of the complaint and its subparagraphs therein contain any material allegations against Abex, they are denied.

96. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of

this paragraph of the complaint contains any material allegations against Abex, they are denied.

97. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

“COUNT TWO”

98. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

99. Abex is without sufficient knowledge to admit or deny the allegations contained in this paragraph of the complaint, and accordingly they are denied.

100. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

101. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of

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“COUNT THREE”

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“COUNT FOUR”

118. This paragraph of the complaint contains no allegations directed at this defendant, and, accordingly, no response is required. To the extent a response may be required, Abex denies any liability arising out of the allegations contained in this paragraph of the complaint.

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120. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint or its subparagraphs therein. To the extent the remainder of this paragraph of the complaint and its

subparagraphs therein contain any material allegations against Abex, they are denied.

121. Abex denies any liability arising out of the allegations contained in this paragraph of the complaint. To the extent the remainder of this paragraph of the complaint contains any material allegations against Abex, they are denied.

“JURY DEMAND AND AD DAMNUM”

Abex denies that Plaintiffs are entitled to a judgment against Abex or to any damages or any other relief from Abex.

THIRD DEFENSE

Plaintiffs' claims, separately and severally, are barred, in whole or in part, by the applicable statutes of limitations.

FOURTH DEFENSE

Plaintiffs' claims, separately and severally, are barred by the doctrines of laches, estoppel, and waiver, separately and severally.

FIFTH DEFENSE

Plaintiffs have not suffered a compensable injury.

SIXTH DEFENSE

Plaintiffs' claims, separately and severally, are barred in whole or in part due to the contributory negligence of Plaintiffs or Plaintiffs' decedents.

SEVENTH DEFENSE

Plaintiffs or Plaintiffs' decedents assumed the risk of any hazard which caused or contributed to the injuries alleged in the complaint.

EIGHTH DEFENSE

Plaintiffs' claims, separately and severally, are barred because the damages and injuries alleged in the complaint were not caused by this defendant or any product manufactured by this defendant, but any such damages and injuries were the proximate result of the conduct of other persons over whom the defendant had no control and for whom this defendant is not responsible.

NINTH DEFENSE

Plaintiffs' claims, separately and severally, are barred by the learned intermediary doctrine in that the employers of Plaintiffs' decedents had notice of any danger or hazard involved in handling asbestos-related

products and of any precautions necessary for the safe handling of such products.

TENTH DEFENSE

Abex did not owe a duty to warn Plaintiffs' or Plaintiffs' decedents of potential risks, if any, associated with working with asbestos-related products, because Plaintiffs or Plaintiffs' decedents were or should have been fully aware of any potential risk, if any, prior to the occasion which forms the basis of this complaint.

ELEVENTH DEFENSE

The knowledge of Plaintiffs or Plaintiffs' decedents of the potential risk, if any, associated with handling asbestos-related products negates any possible finding that a failure to warn of such potential risk was the proximate cause of any alleged injury.

TWELFTH DEFENSE

Abex avers that it did not owe a duty to warn Plaintiffs or Plaintiffs' decedents of the potential risk, if any, associated with handling asbestos-related products because defendant was not in privity with

Plaintiffs or Plaintiffs' decedents and her employers were fully aware of such potential risk prior to the incident made the basis of Plaintiffs' suit.

THIRTEENTH DEFENSE

At the time of sale and/or delivery of any product manufactured by Abex that may be involved in this case, any such product complied with any and all state and federal codes, standards, and regulations.

FOURTEENTH DEFENSE

At the time of the sale or delivery of any product manufactured by Abex that may be involved in this case, any such product conformed to the state of the art applicable for such products in existence at that time.

FIFTEENTH DEFENSE

The injuries and damages allegedly sustained by Plaintiffs or Plaintiffs' decedents were not proximately caused by any product manufactured by Abex but were the proximate results of supervening or intervening causes or circumstances.

SIXTEENTH DEFENSE

The injuries and damages allegedly sustained by Plaintiffs or Plaintiffs' decedents, if any, were incurred as a result of the misuse, abuse, or substantial alteration of a product, if any, manufactured by Abex.

SEVENTEENTH DEFENSE

With respect to any claim by Plaintiffs for punitive damages, Plaintiffs' action for and pursuit of punitive damages herein, separately and severally, Abex adds and separately and severally assigns the following grounds:

1. Abex denies that it is guilty of conduct referable to which punitive damages could or should be awarded, and denies that plaintiff has produced clear and convincing evidence sufficient to support or sustain the imposition of punitive damages against Abex.

2. Plaintiffs' claims for the recovery of punitive damages are barred by and/or subject to all applicable limitations established by the Alabama legislature including those set forth in § 6-11-21, *et seq.*, Code of Alabama.

3. Abex denies that it was or has engaged in a pattern or practice of intentional wrongful conduct, and denies that plaintiff has produced evidence sufficient to support or sustain a pattern or practice of intentional wrongful conduct by Abex so as to justify an award of punitive damages.

4. Plaintiff cannot recover punitive damages against Abex because such an award, which is penal in nature, would violate Abex's constitutional rights protected under the Alabama Constitution of 1901, as amended (the "Alabama Constitution"), and the Constitution of the United States (the "United States Constitution"), unless Abex is afforded the same procedural safeguards as are criminal defendants, including, but not limited to, the right to avoid self-incrimination, the right to forego production and disclosure of incriminating documents, and the right to the requirement of a level of proof beyond a reasonable doubt.

5. Subjecting or affirming an award of punitive damages against Abex in this case would amount to and constitute a denial of due process as afforded by the due process clause of the Fourteenth Amendment to the United States Constitution, and by the due process clause of Art. I, § 13 of the Alabama Constitution, as a deprivation of property without due process,

or standards or criteria of due process, based upon the following grounds and circumstances, separately and severally assigned:

- (a) Any award of punitive damages against Abex under the evidence in this case would necessarily be based upon an evidentiary standard no higher or more than a standard of simple negligence, and not upon a standard of evidence beyond a reasonable doubt;
- (b) There is a lack of reasonable standards necessary to instruct the jury on the propriety and amount of any punitive damage award, and such an award is subject to no predetermined limit;
- (c) Use of the Alabama Pattern Jury Instructions 11.03 in instructing the jury as to the award of punitive damages, and the amount of such an award, does not provide sufficient guidance or standards for the award or amount of punitive damages;
- (d) Any punitive damage award would not be subject to post-trial and judicial review on the basis of objective standards and criteria;
- (e) The power and authority imposed upon the jury under Alabama law as to the amount of a punitive damage award is so

relatively unfettered that there is lacking any reasonable or logical standard, uniformity, criteria or guidance in the assessment of the amount of the award of punitive damages;

(f) Under Alabama law and procedure, there is no objective, logical or rational relationship between the award, or the amount of the award, of punitive damages and Abex's alleged wrongful or culpable conduct;

(g) Under Alabama law and procedure, there is no objective, logical or rational relationship between the award, or the amount of the award, of punitive damages and the interests or goals of the State of Alabama referable to the imposition or allowance of punitive damages;

(h) Under Alabama law and procedure, there is no objective or rational criteria for the amount of the award of punitive damages as relates or compares to the assessment of compensatory damages, or amount of compensatory damages;

(i) In the event that a single verdict be mandated against all defendants herein for an award of punitive damages in this case, such a single verdict would be imposed regardless of the degree of

culpability of a particular defendant, and such a non-apportionment rule could result in a joint and several verdict against all defendants whereby punitive damages could be assessed against one defendant based in part upon culpability of another defendant, and such a joint verdict in a single amount could be enforced against Abex for any portion of that judgment regardless of Abex's culpability, or relative culpability;

(j) Should the Court require the award of punitive damages in a single joint and several verdict of one amount, an adoption of this non-apportionment rule would be contrary to the objective of punishing specific misconduct, and would be contrary to the objective of assessing punitive damages according to culpability of conduct;

(k) Where a joint and several punitive damage award is mandated to be in a single amount, against each defendant, such a rule additionally violates a defendant's right to trial by jury as the jury would be prohibited from apportioning damages against the defendants according to the culpability of the conduct of the respective defendants;

- (l) An award of punitive damages would constitute an arbitrary and capricious taking of property of Abex without due process of law;
- (m) An award of punitive damages may be assessed against Abex for unauthorized acts of its agent or agents without any additional requirement of knowledge or fault on the part of Abex;
- (n) An award of punitive damages may be assessed against Abex "vicariously" as a principal without any further proof of independent wrongful conduct or ratification by Abex;
- (o) Alabama procedures, pursuant to which amounts of punitive damages are awarded, permit the imposition of different penalties for the same or similar acts;
- (p) Under Alabama law and procedures governing the award and assessment of punitive damages, there is no objective, logical or reasonable standard or criteria which governs the award, or the amount of the award, of punitive damages;

(q) The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Abex;

(r) The procedures pursuant to which punitive damages are awarded are unconstitutionally vague;

(s) The procedures pursuant to which punitive damages are awarded fail to provide a clear post-trial or appellate standard of review for an award of punitive damages;

(t) The procedures pursuant to which punitive damages are awarded may permit the admission of evidence relative to punitive damages in the same proceedings during which liability and compensatory damages are determined.

6. To award punitive damages against Abex in this case would violate the excessive fines provision of the Eighth Amendment to the United States Constitution and Art. I, § 15 of the Alabama Constitution.

7. To award punitive damages against Abex in this case would have a chilling effect upon Abex's rights to open access to the courts of this

State, in violation of the United States Constitution and the Alabama Constitution, separately and severally.

8. To award punitive damages against Abex in this case would violate the commerce clause of the United States Constitution by chilling and impeding Abex from engaging in interstate commerce, and such an award, if imposed, would constitute an undue and unreasonable burden on interstate commerce.

9. Plaintiffs are not entitled to punitive damages from Abex pursuant to the facts as alleged in Plaintiffs' complaint.

10. Plaintiffs' claims for punitive damages against Abex are barred by the Fourteenth Amendment to the United States Constitution and by the Constitution of the State of Alabama.

11. Based upon Alabama procedures relative to punitive damages, which provide no objective, logical, or reasonable standards or criteria which govern the award, and the amount of the award, of punitive damages, this defendant is denied equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and Article 1, §§ 1, 6, and 22 of the Alabama Constitution, separately and severally.

12. Plaintiffs' complaint seeks to make this defendant liable for punitive damages. The Supreme Court of the United States has issued opinions in the cases styled BMW of North America, Inc. v. Gore, 116 S.Ct. 1589, 134 L.Ed. 2d 809 (1996), Cooper Industries, Inc. v. Leatherman Tool Group, Inc., 121 S.Ct. 1678, 149 L.Ed 2d 674 (2001), State Farm Mutual Automobile Insurance Co. v. Campbell, 123 S.Ct. 1513 (2003), and Philip Morris USA v. Williams, 127 S. Ct. 1057 (2007), on the issue of punitive damages. Defendant adopts by reference whatever defenses, criteria, limitations, standards, and constitutional protections that are mandated or provided by the decisions of the Supreme Court of the United States in those cases.

13. Plaintiffs' claim for punitive damages violates the rights of this defendant to due process and equal protection of the law as guaranteed by the Constitution of the United States and the Alabama Constitution in that the procedure for post-trial review of punitive damages set forth in Hammond v. City of Gadsden and Green Oil Company v. Hornsby is unconstitutionally vague and inadequate in the following respects:

- (a) The Hammond and Green Oil procedure provides no clearly defined standard for courts to apply in reviewing punitive damages;
- (b) The Hammond and Green Oil procedure provides inadequate review as to the need to deter, whether deterrence has been accomplished, and whether punishment is appropriate for this defendant;
- (c) The Hammond and Green Oil procedure provides inadequate review and a vague standard regarding the relationship of the punitive damage award to the harm;
- (d) The Hammond and Green Oil procedure does not address nor cure the lack of guidelines given the jury in the assessment of punitive damages;
- (e) This procedure is inadequate in that the trial court according to Hammond and Green Oil "may" take certain factors into account and these procedures lack predictable and objective standards of review, allow for inconsistent application of the factors, and allow for unpredictable and inconsistent results; and

(f) The Hammond and Green Oil procedure fails to provide definite and meaningful constraints on jury discretion in awarding punitive damages.

14. Abex avers that Alabama Code § 8-8-10 (1975) is unconstitutional as it applies to the imposition of post-judgment interest to a punitive damages award.

15. Abex has acted at all times in compliance with all regulatory requirements under State and Federal law applicable to the phase of its operations complained of by Plaintiff so punitive damages cannot be awarded to Plaintiff.

16. In the event, and to the extent that, the award of punitive damages, or the amount of the award of punitive damages under Alabama practice and procedure, is deemed to be governed by § 6-11-20, Ala. Code 1975, then, and to that extent, said section violates the Alabama Constitution and the United States Constitution, separately and severally, based upon the grounds enumerated and set forth in the foregoing paragraphs.

EIGHTEENTH DEFENSE

Plaintiffs' complaint fails to allege with sufficient particularity the dates on which Plaintiffs or Plaintiffs' decedents allegedly discovered that their injuries were caused by exposure to Abex's products.

NINETEENTH DEFENSE

Plaintiffs or Plaintiffs' decedents failed to mitigate or otherwise act to lessen or reduce the injuries and damages alleged in the complaint.

TWENTIETH DEFENSE

If it is determined that any form of recovery has been made by way of judgment, settlement, or otherwise, for all or any part of the alleged injuries or damages, then Abex claims the benefit of such recovery by way of set-off, payment, credit, recoupment, accord and satisfaction, or otherwise.

TWENTY-FIRST DEFENSE

Plaintiffs' demand for punitive damages constitutes double jeopardy and violates the Alabama and United States Constitutions.

TWENTY-SECOND DEFENSE

Abex avers that the alleged injuries and damages of Plaintiffs or Plaintiffs' decedents, if any, which are strictly denied, resulted from a pre-existing condition, disease, or infirmity for which Abex is not liable.

TWENTY-THIRD DEFENSE

There should be no recovery against Abex because, as a matter of law, the imposition of liability under the Alabama Extended Manufacturer's Liability Doctrine or under any theory of implied or express warranty, separately or jointly, would operate as an ex post facto imposition of legal liability and duty and thus would violate Abex's constitutional rights under:

(a) The Eighth Amendment of the Constitution of the United States,

(b) The Fourteenth Amendment of the Constitution of the United States,

(c) The Fifth Amendment of the Constitution of the United States,

(d) The Tenth Amendment of the Constitution of the United States,

(e) Article I, Section 15 of the Constitution of Alabama of 1901,

(f) Article I, Section 7 of the Constitution of Alabama of 1901, and

(g) Article I, Section 10 of the United States Constitution.

TWENTY-FOURTH DEFENSE

There should be no recovery against Abex for medical expenses incurred in the care, diagnosis, or treatment of any injury of Plaintiffs' decedent, if any thereby, because said Plaintiffs' decedents' employers are obligated under the workman's compensation law of the State of Alabama, or some other state, to pay for said medical expenses, which were incurred as a result of this occurrence and said employers will be obligated to do so because said Plaintiffs' decedents are entitled to receive benefits from a private or public health insurance program, a health benefit plan, a union sponsored or union provided health benefit plan or other source of health benefits which is responsible for the payment of all medical expenses.

TWENTY-FIFTH DEFENSE

There should be no recovery against Abex based on the Alabama Extended Manufacturer's Liability Doctrine because any culpable

conduct of Abex, the existence of which is strenuously denied, occurred prior to the recognition of the Alabama Extended Manufacturer's Liability Doctrine. Any attempt to impose liability upon Abex for conduct which occurred prior to the recognition of this doctrine would violate separately and jointly: the Fifth and Tenth Amendments of the Constitution of the United States and Article I, Section 7 of the Constitution of the State of Alabama of 1901.

TWENTY-SIXTH DEFENSE

There should be no recovery against Abex based on the Alabama Extended Manufacturer's Liability Doctrine because there is no causal relation between the activities of Abex and the injuries of which the Plaintiffs now complains.

TWENTY-SEVENTH DEFENSE

Plaintiffs are not entitled to a jury trial with respect to the claims for punitive damages.

TWENTY-EIGHTH DEFENSE

To the extent that punitive damages are awarded on a joint and several basis against one or more defendants, such an award violates § 6-11-21(e) of the Code of Alabama.

TWENTY-NINTH DEFENSE

Process was insufficient.

THIRTIETH DEFENSE

Service of process was insufficient.

THIRTY-FIRST DEFENSE

Abex is not guilty.

THIRTY-SECOND DEFENSE

Abex did not act negligently or wantonly.

THIRTY-THIRD DEFENSE

Abex denies that it either owed or breached any duty to Plaintiffs.

THIRTY-FOURTH DEFENSE

Abex denies that Plaintiffs are entitled to damages of the nature, type, and/or amount sought in Plaintiffs' complaint.

THIRTY-FIFTH DEFENSE

Plaintiffs' claims, separately and severally, are barred by virtue of the intentional and knowing assumption of the risks or conditions about which Plaintiffs complain.

THIRTY-SIXTH DEFENSE

Plaintiffs' claims are preempted by applicable federal laws and regulations.

THIRTY-SEVENTH DEFENSE

Plaintiffs' claims, separately and severally, are barred by virtue of the assumption of the risks posed by open and obvious dangers.

THIRTY-EIGHTH DEFENSE

Plaintiffs' claims, separately and severally, are barred by the rule of repose.

THIRTY-NINTH DEFENSE

Abex asserts all of the provisions of the Product Liability Act of Alabama, including, but not limited to, the Statute of Repose provision contained within Section 6-5-502(c), Code of Alabama. To the extent that any provisions therein have been deemed unconstitutional by the courts, Abex reserves the right to have the Court revisit and reconsider any such prior rulings.

FORTIETH DEFENSE

Under Alabama law, Plaintiffs are not entitled to recover any compensatory damages from this defendant.

FORTY-FIRST DEFENSE

Plaintiffs lack standing.

FORTY-SECOND DEFENSE

Plaintiffs' claims, separately and severally, are barred, in whole or in part, by the doctrines of abatement, *res judicata*, collateral estoppel, judicial estoppel, and/or prior pending action.

FORTY-THIRD DEFENSE

Except as expressly admitted herein, Abex denies all allegations contained in Plaintiffs' complaint.

FORTY-FOURTH DEFENSE

Abex reserves the right to amend its answer to assert additional affirmative or supplemental defenses after completion of further investigation and discovery herein.

FORTY-FIFTH DEFENSE

Abex hereby adopts and incorporates herein any and all affirmative defenses pleaded by other defendants.

Respectfully submitted,

s/ Joel M. Kuehnert
Joel M. Kuehnert (KUE001)
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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

All counsel of record

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None

/s/ Joel M. Kuehnert